

LAW OFFICE OF KENNETH G. WALSH

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April 30, 2019

Via ECF

Magistrate Judge James Orenstein
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Stevens Baldo & Lighty, PLLC v. Anthony J. Delluniversita & Paul A. Delluniversita*,
2:18-CV-1600 (E.D.N.Y.)

Dear Judge Orenstein,

In accordance with your Honor's Individual Practice Rules, Plaintiff brings to the court's attention, Anthony P. Delluniversita's fraudulent filing-the Certificate of Service filed on April 26, 2019. D.E. 71.

Pursuant to Judge Brodie's Scheduling Order for Defendants' Motion to Dismiss [D.E. 70], defense counsel was required to serve Plaintiff with said motion on April 26, 2019. On Friday evening, Attorney Delluniversita filed a Certificate of Service [D.E. 71], purporting to represent that Plaintiff's counsel was served via "United States Postal Service Mail 1-Day priority" (sic). Annexed to the Certificate of Service is an "Click-N-Ship" print-out with the package's purported tracking number 9405 5036 9930 0490 0640 55.

As of noon today, Plaintiff's counsel has yet to receive Attorney Delluniversita's motion.

The undersigned went to the USPS's Tracking webpage and inserted the tracking number provided and the USPS reported that on "April 27, 2019 Pre-Shipment Info Sent to USPS, **USPS Awaiting Item**. The U.S. Postal Service was electronically notified by the shipper on April 27, 2019 to expect your package for mailing. ***This does not indicate receipt by the USPS or the actual mailing date.*** Delivery status information will be provided if/when available." See Ex. A attached. Emphasis added.

It appears that the USPS had no record of this package as of noon. In accordance with your Honor's Individual Practice Rules and Local Rule 37.3 of the Local Rule for the United States District Courts for the Southern and Eastern District of New York, the undersigned wrote an email to Attorney Delluniversita inquiring about the motion papers. Annexed hereto as Exhibit B is a copy of the email to Attorney Delluniversita sent at 2:24 P.M. He did not reply.

This evening, I checked the USPS Tracking website and inserted the Tracking No. Attorney Delluniversita attached to his Certificate of Service on file with the court. The USPS Tracking system now reports that on "***April 30, 2019, 7:31 pm [this package was] accepted at***

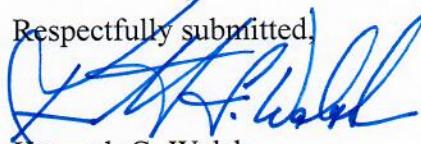
USPS Origin Facility Bay Shore, NY 11706." Emphasis added. Bay Shore is where Attorney Delluniversita maintains his office.

It appears that Attorney Delluniversita filed a false certificate of service with the court in an apparent attempt to deprive Plaintiff's counsel adequate time to review and respond to Defendants' motion to dismiss. Under Judge Brodie's Scheduling Order, Plaintiff's counsel has 14 days to respond. By placing the package in the mail this evening with an anticipated delivery of May 1, 2019, Plaintiff has lost five of the fourteen days to review and analyze a 35 page brief.

Yesterday, Attorney Delluniversita made an application to exceed your Honor's Individual Motion Practice and Rules limit on the number or pages for a memorandum of law and the font size to be used in said memorandum of law. (This application was granted today and now Plaintiff has to content with a 35 page memorandum of law which has not yet been received.) Again, Attorney Delluniversita claimed that Plaintiff was "served timely." *See* Attorney Delluniversita's Letter of April 29, 2019. D.E. 72. This representation was false. Under the Scheduling Order entered by this court, defendants' application was to be served by April 26, 2019. Under Rule 5 of the Federal Rules of Civil Procedure, a motion must be served on every party or its counsel. *See* Rule 5(a)(1) and (b). Service is complete upon mailing. According to the USPS, this was not done with respect to the Tracking Number on Attorney Delluniversita's Certificate of Service. In fact, it was not mailed until four days later.

For a year now, Attorney Delluniversita has been making misrepresentations to the court, he and his family/co-defendants have ignored supplementary proceedings in the state court, thus frustrating the collection of judgment entered in the S.D.TX which has necessitated to some extent this very case and disobeyed the rules and rulings of this court and the S.D.TX. Now according to the Certificate of Service he filed in this proceeding and the records of the USPS, it is clear that he has violated Rule 11. It is respectfully requested that the court issue an Order to Show Cause *sua sponte* to Attorney Delluniversita on why sanctions should not be imposed for this flagrant litigation abuse to handicap Plaintiff's opposition to the defendants' motion to dismiss. In the alternative, Plaintiff should be permitted to renew their motion to disqualify Attorney Delluniversita immediately from continuing to represent the other Delluniversita defendants based upon the grounds previously stated and this newly discovered vexatious filing which is patently false. In addition, the Scheduling Order should be amended to provide Plaintiff another week to oppose defendants' motion to dismiss or in the alternative, the motion should be denied or stricken.

As it stands, Plaintiff's time to respond to the court's Scheduling Order concerning this motion is running and we do not have a motion which Attorney Delluniversita represented to the court was served. Now we know his certificate of service was false. The question is what the consequences of such action.

Respectfully submitted,

Kenneth G. Walsh

Cc: Anthony P. Delluniversita, Esq.

EXHIBIT A

USPS Tracking®

FAQs > (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

Track Another Package +

Tracking Number: 9405503699300490064055

Remove X

Your package is on its way to a USPS facility. Sign up to **get updates**, and we'll send you a delivery date and time when available.

Pre-Shipment

April 27, 2019

Pre-Shipment Info Sent to USPS, USPS Awaiting Item

Get Updates ▼

Text & Email Updates ▼

Tracking History ^

April 27, 2019

Pre-Shipment Info Sent to USPS, USPS Awaiting Item

The U.S. Postal Service was electronically notified by the shipper on April 27, 2019 to expect your package for mailing. This does not indicate receipt by the USPS or the actual mailing date. Delivery status information will be provided if/when available.

Product Information ▼

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<https://www.usps.com/faqs/uspstracking-faqs.htm>)

The easiest tracking number is the one you don't have to know.

With Informed Delivery®, you never have to type in another tracking number. Sign up to:

- See images* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
- Enter USPS Delivery Instructions™ for your mail carrier.

Sign Up

*NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.
<https://reg.usps.com/entry/RegistrationAction.input?>

EXHIBIT B

USPS Tracking®

[FAQs >](https://www.usps.com/faqs/uspstracking-faqs.htm) (https://www.usps.com/faqs/uspstracking-faqs.htm)

[Track Another Package +](#)

Tracking Number: 9405503699300490064055

[Remove X](#)

Expected Delivery by

WEDNESDAY

1 MAY
2019 i by
8:00pm i

In-Transit

April 30, 2019 at 8:48 pm
Departed USPS Regional Origin Facility
METRO NY DISTRIBUTION CENTER

[Change Delivery Instructions](#) ▼

Text & Email Updates ▼

Delivery Instructions ▼

Tracking History ^

April 30, 2019, 8:48 pm

Departed USPS Regional Origin Facility
METRO NY DISTRIBUTION CENTER

Your item departed our METRO NY DISTRIBUTION CENTER origin facility on April 30, 2019 at 8:48 pm. The item is currently in transit to the destination.

April 30, 2019, 8:46 pm

Arrived at USPS Regional Origin Facility
METRO NY DISTRIBUTION CENTER

April 30, 2019, 7:31 pm

Accepted at USPS Origin Facility
BAY SHORE, NY 11706

April 27, 2019

Pre-Shipment Info Sent to USPS, USPS Awaiting Item

Product Information



See Less ▲

Can't find what you're looking for?

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Sign Up

https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgo%2FTrackConfirmAction%3FtRef%3Dfullpage%26tLc%3D3%26text28777%3D&tLabel=Track+Your+Mail+Online

*NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.